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Communications Systems, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE BROCADE COMMUNICATIONS
SYSTEMS, INC. DERIVATIVE
LITIGATION**

Case No. C 05-02233 CRB

**[PROPOSED] ORDER APPROVING
SETTLEMENT AND ENTRY OF
COMPLETE BAR ORDER AS TO
DEFENDANT SETH D. NEIMAN**

This Document Relates to:

ALL ACTIONS

Date: July 24, 2009
Time: 10:00 a.m.
Dept: 8, 19th Floor
Judge: Hon. Charles R. Breyer

1 Plaintiff Brocade Communications Systems, Inc.'s ("Brocade") Notice of Motion and
2 Motion for Approval of Settlement and Entry of Complete Bar Order as to Defendant Seth D.
3 Neiman ("Neiman"), dated June 25, 2009 (the "Motion"), having been presented to the Court;
4 and,

5 IT APPEARING TO THE SATISFACTION OF THE COURT THAT:

6 1. Copies of the following documents were served on the other parties to this action
7 and their counsel of record:

- 8 a. the Motion;
- 9 b. the Declaration of Peter E. Root in support of the Motion, which attached
10 the May 18, 2009 settlement agreement between Brocade and Neiman (the
11 "Settlement Agreement");
- 12 c. the Declaration of the Special Litigation Committee Members in support of
13 this Motion; and
- 14 d. this [Proposed] Order;

15 2. Any timely objections to the settlement have been heard and considered;

16 3. The Settlement Agreement provides that Mr. Neiman will contribute \$450,000 to
17 his attorneys to be applied as a credit to reduce the legal fees and expenses that Brocade otherwise
18 might be obligated to pay on Neiman's behalf;

19 4. Upon entry of this Order, Brocade and Neiman will file a joint stipulation and
20 proposed order for dismissal with prejudice of Brocade's remaining claims against Neiman, and
21 Neiman's counterclaims against Brocade, in this Action. Brocade also shall dismiss all claims
22 with prejudice against Neiman in the arbitration to which this Court previously referred this
23 matter, and shall move the Superior Court at an appropriate time for an order dismissing with
24 prejudice the claims against Neiman in the State Derivative Action, captioned *In re Brocade*
25 *Communications Systems, Inc. Derivative Litigation*, Case No. 1:05-CV-041683 (Komar, J.);

26 5. The Settlement Agreement provides for "a judgment credit equal to the Neiman
27 Releasees' pro rata share of the judgment against such person or entity, pursuant to the terms of
28 Delaware law; provided further that, if a court should determine that the amount of the judgment-

1 reduction credit should be prescribed in whole or in part by federal law or by California law, the
2 amount of the judgment-reduction credit shall be equal to (i) the amount specified in 15 U.S.C.
3 § 78u-4(f)(7)(B), to the extent federal law applies, or (ii) the amount of the fee credit provided for
4 in paragraph 1(b) [of the Settlement Agreement] to the extent California law applies”; and

5 6. No confidentiality clause of any kind is contained in the Settlement Agreement;

6 NOW, THEREFORE, IT IS DETERMINED AND ORDERED THAT:

7 The Settlement Agreement between Brocade, by and through the Special Litigation
8 Committee of its Board of Directors, and Neiman, is hereby approved.

9 A Complete Bar Order consistent with the Settlement Agreement is hereby entered in
10 favor of Neiman as follows, with the terms “Parties,” “Consolidated Federal Derivative Action,”
11 “State Derivative Action,” “Barbour Action,” “Released Claim,” “Options Matters,” “Neiman
12 Releasees,” and “Effective Date” having the meaning and scope ascribed to them in the
13 Settlement Agreement:

14 (a) Any and all persons and entities, including, without limitation, the other
15 defendants in the Consolidated Federal Derivative Action, the State Derivative Action, and the
16 Barbour Action (collectively, the “Other Defendants”), are permanently barred, enjoined, and
17 restrained from commencing, prosecuting, or asserting any claim against any Neiman Releasee
18 arising under any federal, state, or foreign statutory or common-law rule, however styled, whether
19 for indemnity or contribution or however denominated, where the claim is or arises out of a
20 Released Claim or out of the Options Matters and the alleged injury to such person or entity arises
21 from that person’s or entity’s or any other person’s or entity’s alleged liability to Brocade,
22 including, without limitation, any claim in which a person or entity seeks to recover from any of
23 the Neiman Releasees (i) any amounts such person or entity has or might become liable to pay to
24 Brocade and/or (ii) any costs, expenses, or attorneys’ fees from defending any claim by Brocade.
25 All such claims are hereby extinguished, discharged, satisfied, and unenforceable, subject to a
26 hearing to be held by the Court, if necessary. The provisions of this subparagraph (a) are
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1 intended to preclude any liability of any of the Neiman Releasees to any person or entity
2 (including any Other Defendant) for indemnity or contribution, however denominated, on any
3 claim that is or arises out of a Released Claim or out of the Options Matters and where the alleged
4 injury to such person or entity arises from that person's or entity's or any other person's or
5 entity's alleged liability to Brocade; *provided, however,* that if Brocade obtains any judgment
6 against any such person or entity based upon, arising out of, or relating to a Released Claim or the
7 Options Matters for which such person or entity and any of the Neiman Releasees are found to be
8 jointly liable, that person or entity shall be entitled to a judgment credit equal to the Neiman
9 Releasees' pro rata share of the judgment against such person or entity, pursuant to the terms of
10 Delaware law; *provided further* that, if a court should determine that the amount of the judgment-
11 reduction credit should be prescribed in whole or in part by federal law or by California law, the
12 amount of the judgment-reduction credit shall be equal to (i) the amount specified in 15 U.S.C.
13 § 78u-4(f)(7)(B), to the extent federal law applies, or (ii) the amount of the fee credit provided for
14 in paragraph 1(b) of the Settlement Agreement to the extent California law applies. The
15 provisions of this subparagraph shall not apply to any claim by a Neiman Releasee against
16 another Neiman Releasee; any such claims shall be covered by the following subparagraph (b).

17 (b) Each and every Neiman Releasee is permanently barred, enjoined, and
18 restrained from commencing, prosecuting, or asserting any claim against any other person or
19 entity (including, without limitation, any Other Defendant) arising under any federal, state, or
20 foreign statutory or common-law rule, however styled, whether for indemnity or contribution or
21 however denominated, where the claim is or arises from a Released Claim and the alleged injury
22 to such Neiman Releasee arises from that Releasee's or any other person's or entity's alleged
23 liability to Brocade, including, without limitation, any claim in which any Neiman Releasee seeks
24 to recover from any person or entity, including another Neiman Releasee or any Other Defendant,
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1 (i) any amounts any such Neiman Releasee has or might become liable to pay to Brocade and/or
2 (ii) any costs, expenses, or attorneys' fees from defending any claim by Brocade. All such claims
3 are hereby extinguished, discharged, satisfied, and unenforceable; *provided, however,* that
4 nothing in this subparagraph (b) is intended to apply to Neiman's entitlement to fees and expenses
5 as provided in paragraphs 1, 2, and 3 of the Settlement Agreement.

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7 (c) Notwithstanding anything stated in the Complete Bar Order, if any person
8 or entity (for purposes of this subparagraph (c), a "Petitioner") commences against any of the
9 Neiman Releasees any claim or action either (i) asserting a claim that is or arises from a Released
10 Claim or the Options Matters and where the alleged injury to such person or entity arises from
11 that person's or entity's or any other person's or entity's alleged liability to Brocade or
12 (ii) seeking contribution or indemnity for any liability or expenses incurred in connection with
13 any such claim, and if such action or claim is not barred by a court pursuant to this subparagraph
14 or is otherwise not barred by the Complete Bar Order, neither this Complete Bar Order nor the
15 Settlement Agreement shall bar claims by that Neiman Releasee against (a) such Petitioner,
16 (b) any person or entity who is or was controlled by, controlling, or under common control with
17 the Petitioner, whose assets or estate are or were controlled, represented, or administered by the
18 Petitioner, or as to whose claims the Petitioner has succeeded, and (c) any person or entity that
19 participated with any of the preceding persons or entities described in items (a) and (b) of this
20 subparagraph (c) in connection with the assertion of the claim brought against the Neiman
21 Releasee(s); *provided, however,* that the Settlement Agreement and this Complete Bar Order shall
22 not bar or enjoin Brocade from bringing any and all claims against any non-Neiman Releasee;
23 *provided, further,* that nothing in this Complete Bar Order or the Settlement Agreement shall
24 prevent the Parties from taking such steps as are necessary to enforce the terms of the Settlement
25 Agreement.

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1 (d) If any term of the Complete Bar Order entered by the Court is held to be
2 unenforceable after the date of entry, such provision shall be substituted with such other provision
3 as may be necessary to afford all of the Neiman Releasees the fullest protection permitted by law
4 from any claim that is based upon, arises out of, or relates to any Released Claim.

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6 Dated: July 16, 2009
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